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*In the Court of Common Pleas of Dauphin County.*

COMMONWEALTH OF PENNSYLVANIA vs. THE PRESIDENT, MANAGERS,  
AND COMPANY FOR ERECTING A BRIDGE OVER THE RIVER DELAWARE  
AT OR NEAR TRENTON.

By virtue of the joint legislation of the States of Pennsylvania and New Jersey, a bridge was erected by an incorporated company across the Delaware river at Trenton, where the river is navigable and the tide rises. The corporate meetings of the said Bridge Company, its principal office, and the great majority of its stockholders and directors had always been and still continue to be within the exclusive jurisdiction of New Jersey. Under the Tax Acts of Pennsylvania, imposing taxes on the capital of "an institution or company incorporated under any law of the Commonwealth," it was held: first, that the said bridge was an institution or company incorporated under the laws of Pennsylvania; second, that inasmuch as only one-half the company's property was within the jurisdiction of Pennsylvania, that one-half of its capital stock alone could be there taxed.

This was an appeal from the decision of the Accounting Department made against the defendants for the sum of \$4,007 79, the amount of tax assessed upon their capital stock, under the acts of June 11th, 1840, and April 29th, 1844, from the year 1841 to, and including, the year 1858.

The appeal was tried before Mr. Justice Pearson and a jury, at the September Term, 1860. It was argued by *Mr. Attorney-General Knox and George W. Knox, Esq.*, of Harrisburg, on behalf of the Commonwealth, and by *Messrs. Fish and Mallery*, of Philadelphia, on behalf of the Bridge Company.

The counsel for the Commonwealth cited act of June 11th, 1840; Pamp. L., p. 612; act of April 29th, 1844; Pamp. L., p. 498.

The counsel for the Bridge Company argued the following points:

I. The Bridge Company being a corporation deriving its powers from joint grants by two sovereigns cannot be taxed for its entire stock or property by the unaided legislation of either.

*Middle Bridge Corporation vs. Marks*, 26 Maine, 326; *South Carolina R. R. Co. vs. Jones*, 4 Richardson's Eq. Rep. 559, 468; *Commonwealth vs. Milton*, 12 B. Monroe, (Ky.,) 223; *The State vs. Hull*, 1 Dutcher, (N. J.,) 561.

II. This bridge is not "an institution or company incorporated

by or under any law of this Commonwealth," except so far as it is "a corporation living, acting, and existing in this State."

*Commonwealth vs. The Cleveland, Painesville, and Ashtabula R. R.* 5 Casey, 370; *New York and Erie R. R. vs. Sabin*, 2 Casey, 343; *Boston Manufact. Co. vs. Newton*, 22 Pick. 22; *Howell vs. The State*, 3 Gill, R. 23.

III. This bridge cannot, under the agreement with New Jersey, be taxed, except so far as it is within the exclusive jurisdiction of Pennsylvania, or within her territory.

Compact of March 16th, 1786; New Jersey Rev. Stat., 1847, p. 43; Nixon's Dig. p. 824; 2 Dallas' Laws, 143.

The opinion and charge of the Court, in which the facts fully appear, was delivered by

PEARSON, J.—This case came into court by an appeal taken by the defendant from the decision of the Auditor-General and State Treasurer, who charged it with a tax on its whole capital stock from the year 1841 to, and including, the year 1858, amounting, in the aggregate, to \$4,007 79.

The company denies its liability to pay any tax whatever, on the ground that it is not *solely* a corporation of the State of Pennsylvania, its property is not situated therein, and its capital stock is mainly held by citizens of New Jersey.

The Delaware river is the dividing line between the States of Pennsylvania and New Jersey. The former State was founded on a charter granted to William Penn by Charles the Second, and the latter by a grant from the same monarch to the Duke of York. Which proprietary first claimed jurisdiction over the river we are unable to say, but it is more than likely it was claimed by both; as private grants made by the proprietary of New Jersey, even on the tide waters, were always conceded to extend to the middle of the stream. Angell on Tide Waters, 44, 3 Kent Com. Part VI., Sec. II., but in Pennsylvania the reverse was the case as to private grants, yet the State claimed jurisdiction over all the great water courses. About the close of the American Revolution, commissioners were appointed to settle the disputed claim for the jurisdiction over this river by the two States, and they reported in substance that the

river should forever remain a public highway for purposes of navigation: the State in nearest proximity to any island should own and have jurisdiction over it, and offenders should be tried in which-ever State they were first arrested, for all offences committed on the water. The report was ratified by acts of Assembly of each State in 1783, and the property in islands has been held, and offenders tried, under that compact ever since. Beyond these points the question of jurisdiction was not considered important; but so far as we can ascertain, neither State has ever attempted to assume any authority over the waters of the stream, or to erect bridges over it, without the consent of the other. On the 3d day of March, 1798, P. L., p. 321, an act was passed by the Legislature of New Jersey, incorporating the Trenton Delaware Bridge Company, and a similar law was enacted by the Legislature of Pennsylvania on the 4th of April, in the same year. 3 Smith, 336; 4 Dallas, P. L. 303. Letters patent were issued to this company by the Governor of New Jersey on the first day of August, 1803, and by the Governor of Pennsylvania on the 16th of the same month and year. The minute book of the company shows that all of its meetings have been held in the city of Trenton, its books and office kept there, and the principal portion of the stock has always been held in the State of New Jersey. It is conceded that the tide rises above the location of this bridge. That this company is a corporation, under the laws of both New Jersey and Pennsylvania, is perfectly clear.

On the 11th day of June, 1840, P. L., p. 612, an act of Assembly was passed imposing a tax of one-half mill on every dollar of the value of the stock of all banks, institutions, and companies whatsoever, incorporated by or in pursuance of any law of this Commonwealth, and an additional half mill on each additional one per cent. of dividend declared or made. This act was superseded by that of the 29th of April, 1844, P. L., p. 498, which changed and modified the rate of taxation and the mode of its assessment, but retained the same on corporations or companies. Is the capital stock of the Trenton Delaware Bridge Company subject to the payment of a tax under those acts? and if so, to what extent? It is incorporated by and in pursuance of a

law of this Commonwealth, although its stockholders mainly reside in another State, and, as we conceive, one-half of its property is not within our jurisdiction. When a large and navigable river is the boundary between two independent sovereign States, or countries, each is entitled to hold *usque ad filum aquæ*, in the absence of any compact or grant. In the treaty between Pennsylvania and New Jersey, already referred to, the subject of taxation does not appear to have entered into the consideration of the parties, as it is not probable that either ever contemplated a bridge or dam being extended across its waters. This not being a case provided for, we must refer to the rights of the States independent of the treaty, and, as we understand the law, each owns to the centre of the stream. It must be conceded, that taxation is an incident of sovereignty, is one of the highest exercises of the power of government, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of the State extends are objects of taxation; but those over which it does not extend are, upon the soundest principles, exempt from taxation. The people of a State give their government the power of imposing taxes on themselves, and it is a power essential to the very existence of the government, but they cannot confer that power in regard to persons or property out of their jurisdiction, and if they could it might be subject to the greatest abuse, as the only security against oppressive taxes is the power which the constituent has over his representative. See *M'Collough vs. State of Maryland*, 4 Wheaton, 310. Every nation possesses exclusive sovereignty and jurisdiction within its own territory, and over all persons resident within it, and its laws bind all property, whether real or personal, therein. But no power, by its laws, can directly affect or bind persons or property without its own territory, for it would be wholly inconsistent with the equality of nations, that one should be at liberty to regulate either persons or things within the other. No sovereign has a right to give the law beyond his own dominions. Story's Conflict of Laws, Secs. 18, 19, 20.

The jurisdiction of the State extends over all the people, and over all the property which may be considered fairly as constituting the mass of its wealth, but not over persons or things extra territorial. *Howell vs. The State*, 3 Gill, R. 23.

Counties and towns are limited in their power of taxation to objects within their bounds. Therefore, it was held in New Jersey, that a town could only tax so much of a bridge as was within its own boundaries, and where the abutment alone stood within the town, and the authorities imposed a tax on one-half of the whole structure, it was held to be illegal. *The State vs. Hull*, 1 Dutcher, (N. J.,) 561.

It was decided in Maine that the Legislature of the State could not create a corporation to build a bridge and to take tolls out of its limits; therefore, where that part of the bridge was used without the limits of the State, it was held that the law does not imply a contract to pay for the use. *Middle Bridge Company vs. Marks*, 26 Maine, Rep. 326.

As to the general inability to impose taxes beyond the limits of the assessing power, see *Commonwealth vs. Milton*, 12 B. Monroe, 223; *Boston Manufact. Co. vs. Newton*, 22 Pick. 22; *South Carolina R. R. Co. vs. Jones*, 4 Rich. Equity R. 559, 468.

Although the imposition of taxes is *strictissimi juris*, and never to be *extended* by intendment, yet it may be *limited* by fair equitable considerations, so as not to embrace objects coming within the words, yet out of the intention of the Legislature. The words of our own act embrace all companies incorporated in pursuance of our laws, and it must be conceded that this corporation holds its charter under the laws of Pennsylvania. But neither its property nor capital stock are exclusively within the State, and it cannot be supposed that the Legislature, by any general expression, intended to impose taxes on the people or property of another State, to which alone they are amenable, and from which they receive protection. In the *Easton Bridge Company vs. The County*, 9 Barr, 416, Judge Coulter says, "This State can tax all that is within its *bounds*, and *which receives protection from its laws*, unless exempt by the laws of the United States or of this State." There was no pretence in that case to tax what is without the State, and beyond the protection of our laws. In the *Commonwealth vs. The Cleveland, Painesville, and Ashtabula R. R. Company*, 5 Casey, 370, there was no attempt to impose a tax on the whole capital stock of the company, but only on so

much as was expended in constructing the road in this State. The Legislature exercised the same equitable power in taxing the New York and Erie Railroad. An additional argument, as to the extent to which the taxation was intended to be carried in property like that now under consideration, may be drawn from the method pointed out for the collection of taxes under the law imposing them. In the first place, the officers of the corporation are required to retain the taxes out of the dividends. If insufficient, to sell the stock of the corporators. If all other means fail the property of the corporation is to be subject to a levy and sale. Could that part of the property situated in New Jersey be sold for the taxes under a law of Pennsylvania? Or must the end situated in this State be subjected to the whole tax on the capital stock held by the citizens of New Jersey? The counsel of the State and for the company have both argued that there can be no apportionment of the tax, the one side contending that the company comes within the letter or the statute, and must be taxed in full; the other, that it is not solely a Pennsylvania corporation, and, therefore, cannot be taxed at all. We are of the opinion that the tax may be properly apportioned in proportion to the amount of property belonging to the corporation within this State. A dwelling house built half in each of two counties would not escape taxation, nor could it be assessed at its full value in each county, else it would be taxed double, and this company does not stand in the situation of a chartered libertine, which is to escape its share of public burdens. It can scarcely be expected that the Legislature will provide for every possible case by a single law, and its general expressions must be equitably and fairly applied to the particular cases as they arise, extended or limited by intentment, according to the special circumstances. The jury will, therefore, render a verdict for one-half the amount of taxes assessed, according to the account as stated, after deducting the receipt of \$800—paid to Dr. Hammond from that half, and compute interest on the amount due after three months from the time of stating the account.